

# Our Children's Trust



## Plaintiffs: “OUR CHILDRENS TRUST”

A case brought by 21 youth in 2015, supported by Our Children’s Trust, over the federal government’s alleged failure to rein in fossil fuel development and address climate change

First filed in Eugene, Oregon

Who are the youth plaintiff’s? (Ages at the time the case was filed)

Colorado, 16 15

Oregon, 20 19 10 11 11 11 15 19 19 19 14

Florida 9

Hawaii 16

New York 17

Louisiana 13

Arizona 14

Alaska 15

Pennsylvania 17

Washington 15



# The case foundation rests on three concepts

## Public Trust Doctrine

- “By the law of nature ... the air, running water, the sea, and consequentially the shores of the sea ... are common to all mankind.”

Institutes of Justinian 2.1.1 (533 BCE)

*This established the fiduciary [Trustee] obligation of GOVERNMENT to preserve essential natural resources for all present AND*

## Constitutional Protections

- 5<sup>th</sup> Amendment of the US Constitution guarantees that citizens will not be deprived their rights to life, liberty and property without due process of law
- 5<sup>th</sup> Amendment of the Constitution guarantees equal protection of the laws for all citizens.

## Atmospheric Trust Claim

- Government is trustee
- Air and atmosphere part of trust “res”  
[‘res’ means “matter already judged”]
- Youth are beneficiaries
- Duty of action against “substantial impairment” of climate system
- Remedy: An enforceable, science-based climate recovery plan.

# U.S. GOVERNMENT'S LONG-STANDING KNOWLEDGE OF CLIMATE DANGER

**US. OFFICE NAVAL RESEARCH & DR. ROGER REVELLE, DIRECTOR OF SCRIPPS INSTITUTION OF OCEANOGRAPHY**  
Increasing CO<sub>2</sub> from burning of fossil fuels linked to climate change, rising temperatures, & hurricane frequency

**ATOMIC ENERGY COMMISSION**  
Rising CO<sub>2</sub> concentration "could melt polar ice caps" & "inundate the coastal regions"

**SENATORS' BIPARTISAN REQUEST TO EPA**  
GHGs "irreversibly altering" ability of "atmosphere to perform basic life support functions"

**REPORTS TO CONGRESS**  
CO<sub>2</sub> levels should be stabilized at 350 ppm, and limiting emissions cannot wait

**NYT INTERVIEW WITH PRESIDENT OBAMA**  
President Obama: Holdren's Climate Reports to him are "terrifying"

1955 1957 1965 1969 1972 1979 1986 1988 1990 1991 2003 2016

**WHITE HOUSE REPORT & MOYNIHAN MEMO**  
Burning fossil fuels causes "irreversible climate change," predicts 10 feet sea level rise, & "apocalyptic change"

**NAS CHARNEY REPORT**  
"Wait-and-see policy may mean waiting until it is too late"

**DR. JAMES HANSEN SENATE TESTIMONY**  
Anthropogenic warming will cause more frequent and powerful storms, floods, and heat waves

**CONGRESSIONAL BUDGET OFFICE REPORT**  
Burden "will be borne throughout the world by generations of people who are not even born"

## Claims

- US Government has known for more than 50 years of clear dangers of carbon pollution and the safe limits of atmospheric CO-2 concentrations
- Nonetheless, US Government acted affirmatively (subsidizing, permitting and facilitating fossil fuel development, etc) to cause increasing and unsafe CO-2 concentrations that threaten to make our climate system incapable of sustaining human life.



## These Aggregate Actions...

- Violate the federal government's public trust fiduciary [trustee, to the public's beneficiary] obligation to preserve essential natural resources for the benefit of future generations
- Violate plaintiff's 5<sup>th</sup> Amendment substantive due process rights to life, liberty and property.
- Treat youth and future generations differently from adult citizens who will not bear the same grave consequences of the climate crisis, denying youth and future generations equal protection of the laws.

# Juliana et al v. United States

10 November 2016

Federal Court Ruling

US District Judge Ann Aiken:

- “Even when a case implicated hotly contested political issues, the judiciary must not shrink from its role as a coequal branch of government.”
- A charter protecting the rights of all persons to enjoy liberty as we learn its meaning. When new insights reveal discord between the Constitution’s central protections and a received legal stricture, a claim to liberty must be addressed



Judge Aiken. University of Oregon  
graduate (BA, JD)

## Amicus Curie briefs filed to support youth by:

- Food and Water Watch
- Friends of the Earth
- Greenpeace
- Center for International Environmental Law
- Environmental Law Alliance Worldwide
- League of Women Voters
- Earthjustice
- Earth Rights International
- Defenders of Wildlife
- Union of Concerned Scientists
- Center for Biological Diversity
- Sierra Club
- Global Catholic Climate Movement
- Leadership Conference of Women Religious
- Interfaith Power and Light
- The Shalom Center (Jewish)
- San Francisco Zen Center
- Eco-Justice Ministries
- Law Professors

Also, six STATES filed  
Amicus Curie briefs! (2021)

New York

Delaware

Hawai'i

Minnesota

Oregon

Vermont

Plus other groups and many individuals

Also relevant

Obergefell v. Hodges (2015)

*(A case on same-gender marriage, relying on the 14<sup>th</sup> Amendment, with sections applicable to this case)*

- Thus, “the identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution ... that has not been reduced to any formula.”
- In determining whether a right is fundamental, courts must exercise “reasoned judgement”, keeping in mind that “history and tradition guide and discipline this inquiry but do not set its outer boundaries.”
- The genius of the Constitution is that its text allows “future generations to protect ... the right of all persons to enjoy liberty as we learn its meaning.”



## 10 November 2016 to 2023, and Next Steps

### 1. Trump inauguration and change in tactics:

- ↳ Trump request (8 March 2017) for Interlocutory Appeal of Aiken order DENIED (8 June 2017) by first of two District Court judges.

*Interlocutory Appeal is an appeal of a ruling that is made before the trial itself has concluded. It asks an appellate court to review an aspect of the case.*

*Aiken's issued order on 8 June, after Trump Justice Department filed a RARE motion which set a 9 June 2017 deadline for Aiken to issue her order! Trump appeals anyway*

### 2. Discovery and preparation for trial on ~~5 February 2018~~

- ↳ Alternative Facts are perjury

### 3. Intervenors head for the hills

- ↳ Many try to withdraw before answers are due!

*In law, Intervenor is a nonparty allowed to join ongoing litigation, without permission of the original litigants. They claim the case was a "direct threat" to their businesses, and they had repeatedly filed motions to dismiss and delay.*

*Who? Multiple fossil fuel groups.*

*Why? If they withdrawal now, they could avoid releasing documents and answering questions under oath.*

#### 4. Trump withdraws from Paris Agreement

↳ Trump CANNOT withdraw from this lawsuit

#### 5. 9<sup>th</sup> Circuit Court of Appeals asks for briefing (28 July 2017).

↳ Completed (28 August 2017).

Sought for youth to respond to Trump petition for dismissal of case.

#### 6. 9<sup>th</sup> Circuit Court of Appeals asks for a hearing

↳ 11 December 2017 at 10:00a in San Francisco

↳ 7 March 2018: 9<sup>th</sup> Circuit rules unanimously in FAVOR of youth plaintiffs, rejecting Trump attempt to evade Constitutional Climate Trial.

#### 7. Juliana v. United States trial set for 29 October 2018 in Eugene, Oregon

#### 8. January 2019, Ruling appealed to 9<sup>th</sup> Circuit Court for expedited consideration

↳ Ruling: On January 17, 2020, on a 2–1 vote, the Ninth Circuit panel dismissed the case for lack of Article III standing. Writing for the majority, Judge Hurwitz wrote that "it is beyond the power of an Article III court to order, design, supervise, or implement the plaintiffs' requested remedial plan.

➤ June 2022 – The Ninth Circuit held that ordering the federal government to adopt “a comprehensive scheme to decrease fossil fuel emissions and combat climate change” would exceed a federal court's remedial authority. An appeal is in process

- September 2023 – The majority ruled that the courts lack the authority to order the federal government to develop a plan to decarbonize the atmosphere
- ON APPEAL



SITE FOR UPDATES, and MORE INFORMATION:

<https://www.ourchildrenstrust.org/federal-proceedings/>



**Our Children's**  
**Trust** Youth v. Gov